IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1296 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHIKHABHAI SOMESHWAR PANDYA

Versus

SUNDARLAL KESHAVLAL PANOLA

Appearance:

MR SUNIL K. SHAH for Petitioner

MR MUKUND M DESAI for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 20/02/2001

ORAL JUDGEMENT

1. This is a revision application u/s 29[2] of the Bombay Rent Act at the instance of the petitioner original defendant - tenant, who was sued by the respondent - plaintiff - landlord for a decree of eviction of the rented premises under the provisions of

the Bombay Rent Act.

2. The landlord had filed a suit for eviction against the tenant on a number of grounds. It was contended that the tenant was in arrears of rent of more than six months, and had neglected to pay the same inspite of having received a statutory notice, and therefore, the landlord was entitled to a decree for eviction. The landlord further urged that he required the premises for his personal and bonafide use and occupation, and that the landlord would suffer greater hardship if the decree were refused than the tenant if the decree were granted. The landlord also sought a decree of eviction on the ground that the tenant was creating a nuisance. The landlord further sought a decree for eviction on the ground that the tenant had acquired other suitable residential accommodation, and was therefore liable to be evicted u/s 13[1][l] of the Rent Act.

3. The trial Court after framing the issues and recording the evidence, and after hearing the parties, found that the tenant was ready and willing to pay the rent due and payable as contemplated by section 12[1] of the Act, and therefore, the landlord was not entitled to a decree for eviction on the ground of arrears of rent.

3.1 The trial Court however found that the landlord had established and proved that he required the tenanted premises for his personal and bonafide requirement, and that greater hardship would be caused to the landlord by refusing the decree than to the tenant if the decree were granted. The trial Court, therefore, passed a decree for eviction on this ground.

3.2 The trial Court also found in favour of the landlord on the issue of nuisance and annoyance and passed a decree on the ground of nuisance created by the tenant, and therefore, passed a decree for eviction also on this ground.

3.3 The trial Court also found u/s 13[1][l] of the Act that the tenant had acquired other suitable accommodation for the purpose of doing business, and therefore, also passed a decree for eviction on this ground.

4. The tenant therefore preferred an appeal u/s 29[1] of the Bombay Rent Act. The lower appellate Court, after re-appreciating the entire evidence on record, confirmed the finding of the trial Court, and refused to

pass a decree on the ground of arrears of rent, by upholding the finding of fact recorded by the trial Court to the effect that the tenant had sent money orders of the amount then due to the landlord within 30 days of receipt of the statutory notice u/s 12[2], which money orders were refused by the landlord. The lower appellate Court therefore found that the tenant was ready and willing to pay the rent due and payable on the relevant date within the meaning of section 12[1] of the Act, and therefore, no decree of eviction could be passed on this ground.

4.1 The lower appellate Court however upheld the finding of the trial Court and confirmed that the landlord had succeeded in proving that he required the rented premises bonafide for his personal requirement, and that greater hardship would be caused to the landlord by refusing the decree than to the tenant if the decree were granted.

4.2 The lower appellate Court also confirmed the finding of the trial Court by holding that the defendant is causing nuisance and annoyance to the landlord in the user of the rented premises, and the landlord was therefore entitled to a decree for eviction on this ground.

5. The lower appellate Court has not specifically dealt with the controversy as to whether the landlord would be entitled to a decree for eviction on the ground available to the landlord u/s 13[1][l], that is to say that the tenant had acquired other suitable residential accommodation, possibly because, it is a well accepted principle in law, that the provision of section 13[1][l] would apply to only residential premises, that is to say, premises let out for the purpose of residence. On the facts of the case, there is no dispute that the premises were let out for business purpose at the rate of Rs.25/per month. In this situation, although the tenant had acquired other premises, wherein he could continue to do his business, no decree of eviction could be passed u/s 13[1][l] of the Act. In view of this position, it is possible that the respondent - landlord in the appeal before the lower appellate Court may not have pressed for confirmation of the decree on this ground, or may not have attempted to support the decree on this ground.

6. Thus, in substance, the lower appellate Court confirmed the decree of the trial Court in granting a decree for eviction on two grounds, namely, personal bonafide requirement on part of the landlord, and causing

nuisance and annoyance by and on part of the tenant.

7. It is this judgement and decree of the lower appellate Court confirming the judgement and decree of the trial Court which is subject matter of the present revision u/s 29[2] of the Bombay Rent Act.

8. Before proceeding with the merits of the matter, it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising u/s 29[2] of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Ors. v/s Patel Mohanlal Muljibhai [1998(2) GLH 736] = AIR 1988 SC 3325, while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai v/s Saiyad Mohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

9. I have carefully perused the judgement of both the Courts below which are the subject matter of the present revision, and I have also perused the record and proceedings of the two Courts below with care.

9.1 On a re-appreciation of the entire evidentiary material on record, both oral and documentary, I find that there is no justifiable cause for interference with the findings recorded by the two Courts below on the question of personal bonafide requirement of the landlord, and nuisance and annoyance by the tenant, being the two grounds on which the lower appellate Court has confirmed the decree of eviction passed by the trial Court.

10. However, one aspect requires to be noted where the lower appellate Court has committed an error. It may also be noted that this is an error in favour of the tenant, which had it not been committed, would have resulted in a decree of eviction even on the ground of arrears of rent.

10.1 In this context, it requires to be noted that the

trial Court had recorded a finding that the landlord is not entitled to a decree of eviction on the ground of arrears of rent, since it found from the evidence on record that the tenant, on receiving the statutory notice and the demand for arrears of rent, had complied with the said demand by sending money orders for the due amount within 30 days of the receipt of the said notice. The trial Court also found on the facts of the case that the tenant had deposited the arrears of rent in the Court, and therefore, had clearly established that he is ready and willing to pay the rent within the meaning of section 12[1] of the Act. The trial Court therefore refused to pass a decree on the ground of arrears of rent.

10.2 In this context, the lower appellate Court re-appreciated the evidence on record and confirmed the finding of fact recorded by the trial Court. The lower appellate Court also found that the tenant had remitted money orders in respect of the amount claimed by the landlord in the statutory notice, that these money orders were sent within 30 days of receipt of the statutory notice, and that these money orders were refused by the landlord. The lower appellate Court also took note of the fact that the tenant had deposited the arrears of rent then due in the trial Court.

10.3 However, the error committed by the lower appellate Court in this context is that it only considered the fact situation, in relation to the tenant's readiness and willingness to pay, as it prevailed prior to the suit and during the suit. Even on the facts as found by the trial Court and confirmed by the lower appellate Court, the most that could be said in favour of the tenant is that he had met the demand of the landlord made in the statutory notice, and had made a deposit in the Court in respect of this claim.

10.4 However, what the lower appellate Court did not appreciate, and therefore, failed to apply the correct law to the fact situation, is that the tenant is required to establish his readiness and willingness to pay, not only prior to the suit and during the suit, but also during the pendency of the appeal.

10.5 The deposits made by the tenant and as specifically discussed by the trial Court pertain only to three deposits having been made on 25th March 1982, 25th June 1982 and 16th March 1983. Since the issues were framed by the trial Court on 22nd July 1983, it could be said that the tenant had deposited the amount in Court before framing of the issues, that is to say, before the

first date of hearing of the suit.

10.6 What the lower appellate Court failed to appreciate that these deposits merely pertain to the demand of arrears made by the landlord in the statutory notice, and the total of these deposits is not shown to be the total arrears of rent due and payable on the last date of the deposit, namely, 16th March 1983. In short, when the last deposit was made on 16th March 1983, the deposits so made till date did not satisfy the arrears of rent computed upto that date.

10.7 There is another aspect of the matter. Both the trial Court and the lower appellate Court have only relied upon the broad proposition of law laid down in section 12 sub-section [1], and noting only in a broad sense that the tenant had established his readiness and willingness to pay. What the lower appellate Court failed to notice is that, once the tenant had sent money orders to the landlord in respect of the amount claimed in the statutory notice, the only consequence thereof would be section 12[3][a] would not apply. However, the lower appellate Court has failed to apply the provision of section 12[3][b], which it was bound to apply, since section 12[3][a] would not apply. In order to obtain the protection of section 12[3][b], and also to continue to enjoy the benefit of the said provision, the tenant was also under an obligation to continue to pay or tender in Court such rent or permitted increase till the suit is finally decided, as contemplated by clause [1] of section 12[3][b]. It is also well settled law that an appeal is an extension of the suit, and therefore, regular deposits in Court are also mandatory during the pendency of the appeal, if the tenant is to continue to enjoy the protection of section 12[3][b] of the Act. The facts of the present case do not confer this protection upon the tenant, which has been missed both by the trial Court, as also by the lower appellate Court.

10.8 The last deposit shown to have been made by the tenant is on 16th March 1983, and no further deposit has been made, although the suit was decided on 5th May 1988. Obviously therefore, the tenant would not be entitled to protection u/s 12[3][b].

10.9 The lower appellate Court also failed to appreciate that the tenant was required to continue to make regular deposits of the rent due and payable even during the pendency of the appeal. It is not shown nor discussed by the lower appellate Court that even a single deposit has been made during the pendency of the appeal.

10.10 In the premises aforesaid, both the trial Court, as also the lower appellate Court were in error in refusing to pass a decree of eviction against the tenant on the ground of arrears of rent. It is therefore found that the landlord would be entitled to a decree of eviction also on the ground of arrears of rent.

11. In the premises aforesaid, I find that there is no substance in the present revision, and the same is accordingly dismissed. Rule is discharged with no orders as to costs.

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